

SUPREME COURT OF LOUISIANA

No. 00-C-3518

ELEVATING BOATS, INC.

versus

ST. BERNARD PARISH, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ST. BERNARD

VICTORY, J., Dissenting in Part*

I dissent from that portion of the majority opinion dealing with the prescription of sales and use taxes. I find no support in the Civil Code to persuade me that the concept of continuous interruption should be applied under these circumstances. La. Civil Code art. 3466, upon which the majority relies, was adopted in 1982. The official comments to the article indicate that it was not intended to change the law. Moreover comment (b) expressly notes a “well settled” jurisprudential rule that when prescription is interrupted, it “commences to run anew from the date of the interruption.”

Since article 3466 was not intended to change the law, it is also helpful to consult the views of respected commentators. Planiol teaches that as a general rule, once an act occurs that interrupts prescription, “it recommences to run immediately . . .” 2 Planiol, *Traite Elementaire de Droit Civil*, part I, No. 672 (La. Law Institute translation, 1959). It is clear that the interruptions in question in this case

* Retired Judge Robert L. Lobrano, assigned as Justice Pro Tempore, sitting for Associate Justice Harry T. Lemmon.

Judge Felicia Toney Williams, of the Second Circuit Court of Appeal, assigned as Justice Pro Tempore, sitting for Associate Justice Bernette J. Johnson.

occurred on the discrete dates when the incorrect returns were filed. Accordingly, the new periods of prescription commenced on those same dates.

There is no convincing reason to deviate from the general rule that the statute of limitations commences to run anew immediately after the act that interrupts the initial period. The majority's argument that a different rule should apply because the legislature must "surely" have intended such a result when it enacted La. R.S. 33:2718.4 is grounded in sheer speculation. If the legislature did not intend the statute to be interpreted in accord with established principles, it could have provided for a "continuous interruption" rule in the statute. The result which the majority regards as anomalous commends itself to the sound discretion of the legislature and its amendatory processes, not to this Court.

Finally, I believe the result reached by the majority dictates an even more absurd result than the one the majority seeks to avoid. The majority suggests that an interruption in a case such as this will continue until the debtor takes action to affirmatively disgorge his fraudulent conduct. Were that the case, a parish could accept a fraudulent return and, even after discovering the fraud, wait indefinitely to seek redress. The rule advanced by the majority relieves a parish of any responsibility whatsoever, even where it knows or could reasonably discover the taxpayer error. The parish could conceivably wait 100 years, or longer, to prosecute a known fraud. In my view, the majority's rule goes too far. I believe it more appropriate to interpret the statute in accord with general principles and to await legislative correction of any perceived problems, inasmuch as the legislature is the body constitutionally charged with such responsibilities.

